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November 18, 2020

Hon. Philip M. Halpern
United States District Judge
United States Courthouse
300 Quarropas Street
White Plains, New York 10601-4150

Re: *United States v. Mark Ford, et al.* 7:19 Civ 09600 (PMH)(JCM)

Dear Judge Halpern:

We represent Defendants in the above-referenced case. This letter is submitted in response to Your Honor's order of November 16, 2020, and the Government's letter of November 4, 2020.

MEDIATION AND SETTLEMENT. The Defendants are committed to settlement, because Mr. Ford cannot afford to finance discovery, let alone a trial of this case. The Defendants' most recent settlement offer (its third) includes a phased wetlands mitigation of 14 acres and stream restoration, in addition to voluntary compliance with the Confined Animal Feeding Operation ("CAFO") regulations, despite valid jurisdictional defenses to both. Experts for both sides have been and are still engaged in frequent, ongoing technical discussions to close the gap between the parties. Since our last mediation conference on October 22, they have discussed a refinement of the Government's second counterproposal that also seeks upstream remediation of Crystal Run Creek immediately adjacent to the training track. When we received this second counterproposal, settlement seemed to be at an impasse, due to the potential ruin of the training business, not even considering its multi-million dollar cost to perform. However, Defendants agreed to conduct an engineering evaluation of a supplemental "add" to their offer, downstream (as opposed to upstream) restoration of Crystal Run Creek. This evaluation will use the Army Corps of Engineers "HEC-RAS" modeling to determine the impacts of downstream restoration.¹ Thomas DePuy, P.E. will survey the required portions of the

¹ The Corps' Hydrologic Engineering Center has developed standard modeling known as the Hydrologic Engineering Center River Analysis System ("HEC-RAS"), which, with surveying data input from Crystal Run Creek and the Wallkill River watershed, will perform one-dimensional steady flow, one and two-dimensional unsteady flow calculations, sediment transport/mobile bed computations, and water quality modeling.

watershed, the engineering firm of Barton & Loguidice will perform the HEC-RAS modeling, and James Bates of Ecological Analysis LLC and Mr. DePuy will revise Defendants' offer. The HEC-RAS analysis and a revised proposal will take approximately four months.

THE PROPOSED AMENDED CASE MANAGEMENT PLAN. I did not agree to the Government's Proposed Amended Case Management Plan ("CMP") because I believe it will completely derail settlement negotiations. If this case does not settle, Mr. Ford and his businesses will be driven straight into bankruptcy, and there will be no restoration of any wetlands.

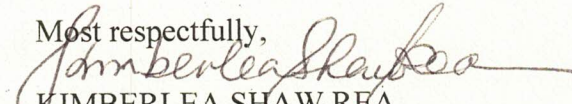
The Government is aware of Mr. Ford's financial situation. In fact, we spent the entire first month of mediation, satisfying the Government's demands for financial documents, supplementing those we had first provided in 2018. After these documents were reviewed by DOJ's financial analyst, the Government withdrew its previous demand for his banking information. The Government insisted that this inability-to-pay claim be documented before it would even begin to negotiate the 14-acre wetlands and stream restoration settlement offer we had made on October 3, 2019. This financial documentation established that Mr. Ford and his businesses have suffered huge losses.

Mr. Ford does not have the funds to pay my legal fees, and I have been working uncompensated for the last 10 months. I understand that Mr. Bates has also been working without compensation. I have advised the Government and Judge McCarthy that I would be compelled to seek the Court's leave to withdraw if the case proceeded to discovery and litigation.

CONFERENCE. The Defendants join in the Government's request for a conference. We all need the Court's guidance at this precarious point. I would only ask that the Court avoid scheduling it the second week of December, as I am having surgery on December 7 and will be recovering the rest of that week.

Thank you for the Court's consideration.

Most respectfully,


KIMBERLEA SHAW REA

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